

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.2014 OF 2007

Shri Chandrakant Ramu Ambi)
 Age 62 years, Occ. Nothing,)
 residing at H. No.48, Ambi)
 Galli, Ichalkaranji,)
 Hatkanangale, Kolhapur.)..Petitioner

Versus

1.State of Maharashtra through)
 Got. Pleader, High Court,)
 Mumbai.)
 2.Deccan Co-operative Spinning)
 Mills Ltd., its office at)
 Station Road, Jawahar Nagar,)
 Ichalkaranji, Kolhapur.)..Respondents

Mr. M.A.Khan with Mr. R.R. Kalekar, for the petitioner
 Mr. R.D.Rane, Govt. Pleader for respondent No.1.

**CORAM : F.I. REBELLO &
 R.M. SAVANT,JJ.**

DATED : 18TH APRIL, 2007.

ORAL JUDGMENT: (PER F.I. REBELLO, J.).

. Rule. Heard forthwith.

2. The petitioner is a workman who had filed his claim for dues before the D.R.T., Pune. The Tribunal by its judgment and order dated 19th January, 2007 dismissed the application by holding that it has no jurisdiction. The Application was purportedly filed under Section 19(19) of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993.

3. The petitioner was one of the workmen of the erstwhile Deccan Co-operative Spinning Mills Limited, a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, now under liquidation and to which a Liquidator has been appointed. IDBI bank had filed proceedings before the D.R.T., Pune. A

Recovery Certificate was issued pursuant to which its immovable property was sold and an amount of Rs.41,21,50,000/- was realised. The claim of IDBI is much lesser and after paying of its dues according to the workman substantial monies are still available to be disbursed.

4. Another workmen had approached us in Writ Petition No.63901 of 2004. By order dated 1st February, 2005 we had held that the workmen are creditors and they are entitled to file their claims independently before the Recovery Officer and the Recovery Officer to decide their claim according to law.

. The learned Tribunal by its impugned judgment dated 19th January, 2007 has held that considering the scheme of the provisions of D.R.T. Act the application by the workman who is not a secured creditor would not be maintainable and has accordingly rejected the same.

5. In our opinion it is not necessary to go into the issue in detail as the matter stands concluded by the judgment of the Supreme Court in Allahabad Bank vs. Canara Bank and Anr. (2000) 4 SCC 406. In para.13 various points were framed for consideration. We may reproduce points 1, 4 and 5 which read as under:-

(1) Whether in respect of proceedings under the RDB Act at the state of adjudication for the money due to the banks or financial institutions and at the stage of execution for recovery of monies under the RDB

Act, the Tribunal and the Recovery Officers are conferred exclusive jurisdiction in their respective spheres?

(4) Whether in case it is decided that the distribution of monies is to be done only by the Tribunal, the provisions of Section 73 CPC and sub-sections (1) and (2) of Section 529, Section 530 of the Companies Court also apply -- apart from Section 529-A to the proceedings before the Tribunal under the RDB Act?

(5) Whether in view of provisions in Sections 19(2) and 19(19) as introduced by Ordinance 1 of 2000, the Tribunal can permit the appellant Bank alone to appropriate the entire sale proceeds realised by the appellant except to the limited extent restricted by Section 529-A. Can the secured creditors like Canara Bank claim under Section 19(19) any part of the realisations made by the Recovery Officer and is there any difference between cases where the secured creditor opts to stand outside the winding up and where he does before the Company Court?

. In so far as Point No.1 is concerned, the same was answered in para.50 which reads as under:-

"50. For the aforesaid reasons, we hold that at the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer

in respect of debts payable to banks and financial institutions and there can be no interference by the Company Court under Section 442 read with Section 537 or under Section 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529-A of the Companies Act and in no other manner. The provisions of the RDB Act 1993 are to the above extent inconsistent with the provisions of the Companies Act 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor Company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents."

. In so far as Point No.4 is concerned, the same was answered in para.51 which reads as under:-

"51. We have already held that the adjudication, execution and distribution of the sale proceeds and working out priorities as between banking and financial institutions and other creditors of the defendant Company - so far as the monies realised

under the RDB Act are concerned - has to be done only by the Tribunal and not by the Company Court. The next question is as to the manner of distribution of these monies between the banks or financial institutions on the one hand and the other creditors, secured or unsecured of the company under winding-up. This question depends upon the effect of Section 19(19) of the RDB Act as introduced by Ordinance 1 of 2000."

. In so far as Point No.5 is concerned, the same was answered in para.52 which reads as under:-

"52. Before we go to Section 19(19), we would like to dispose of another minor point raised by the respondent on the basis of Section 19(2). That sub-section permits other banks or financial institutions to be impleaded in the main application filed under Section 19(1) by a bank or a financial institution. Question is whether Canara Bank can be impleaded in the main application under Section 19 at this stage. We may point out that Section 19(2) permits such impleadment "at any stage of the proceedings before a final order is passed. The final order here is the order of adjudication under Section 19(1) as to whether the debt is due or not. In the present case, the adjudication order in respect of the debt has already been made long back and therefore Section 19(2) does not permit any impleadment in the main application under Section

19(1) at this stage. Hence, this relief for
impleadment cannot be granted."

6. Assuming, therefore, that the petitioner and other
workmen like the petitioner are not secured creditors
considering the exclusive jurisdiction conferred in
execution on the authorities under the RDB Act, it is that
Authority alone which can determine the demands of the
workmen in terms of Section 73 of the C.P.C. If there be an
ascertained sum then the Competent Authority considering the
creditors who are before it and after meeting the
liabilities of the secured creditors, prorata will have to
distribute the amounts amongst the other creditors in the
order of their priority, if any. If the amount is not
ascertained then considering the provisions of the M.C.S.
Act the workmen will first have to file their claims before
the Liquidator, respondent No.2. The said Liquidator will
determine the amount due and payable. On a certificate
being issued by the Liquidator the liquidator himself can
file the claim before the Tribunal and/or on a certificate
issued the workman can file the claim before the tribunal.

. If there are monies available and on the workmen
satisfying the requirement of the Rules the Tribunal to pay
to the workmen either the entire amount or prorata depending
on the amounts available. Considering that these are
workmen and in order to facilitate payment, D.R.T. after
paying the secured creditors in terms of Section 19(19) of
the RDB Act if not yet done then to proceed to invite claims
from all other creditors and thereafter make payment

including to those whose claims are pending according to law.

8. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J)

(R.M. SAVANT, J.)